



Notice of Action

Federal and state regulations require that parents of a child eligible under Part C receive prior written notice a reasonable time before an agency initiates or refuses to initiate certain activities (proposing or refusing to initiate or change the identification, evaluation or placement of the child or provision of appropriate early intervention services.) In Missouri, we give the parent 10 days from the date of the Notice of Action before initiating the action, unless the parent agrees to waive this 10 day waiting period. In addition, there are certain activities that cannot be initiated without the receipt of the parent's prior written consent after the Notice of Action has been provided.

These instructions should help First Steps service coordinators determine the appropriate times to use the separate Notice of Action and Notice of Action/Consent forms and how to accurately complete these forms.

This process is extremely important because providing proper and clearly written Notice of Action ensures parents are informed of decisions as they are made, that they have received information about their rights under Part C along with the Notice, and that they have time to determine if they wish to challenge a decision through due process prior to the action taking place. This helps make it possible for families to take an active role in the decisions that are made on behalf of their child and family and helps ensure the system's compliance with the prior written notice requirements of the Individuals with Disabilities Education Act (IDEA).

Notice of Action Form Instructions

The following instructions are divided into two sections describing the two different circumstances in which the Service Coordinator will use the Notice of Action:

- Notice of Action (when no consent is required)
- Notice of Action/Consent (when written consent is required in addition to provision of the Notice of Action)

Because the provision of one of these documents, including the Parental Rights (which must be provided along with the documents) alerts the family to their legal rights related to the proposed or refused action, it is important to provide this form at the times required by IDEA and not to use the form for actions that do not carry with them the right to challenge the decision through due process.

Notice of Action (No Consent Required)

Service coordinators will need to provide the parent with a Notice of Action with no consent required at the times listed below:

- If there are proposed changes in the IFSP or if the parent's request for IFSP changes are refused
- If ongoing assessments are proposed or the parent's request for an ongoing assessment is refused
- If the SPOE refuses to proceed with initial evaluation
- If the child is found ineligible for First Steps services

- If there is a change in eligibility

Change in IFSP includes: a proposal or refusal by First Steps to change services; placement, location, frequency, intensity, individual vs. group, start and end dates, and method.

Change in eligibility is used when a child has been found eligible for First Steps and subsequently it is determined (e.g. through DESE monitoring or SPOE self assessment) that the decision was made in error; therefore, the child is no longer eligible for First Steps. The Notice of Action is provided to inform the family of our intent to discontinue services due to the fact the child does not meet eligibility requirements.

It is important to clearly articulate the reason/s for the Notice of Action and the following examples may be helpful in this process:

Example Reasons for Notice of Action (No consent required)

Ineligible for First Steps

- To inform you that after reviewing your child's information he/she does not meet eligibility criteria for First Steps.

Change in IFSP

- To change speech services from in home to clinic setting
- To change special instruction from group to individual therapy
- To change PT services from twice a week to one time a week
- To change OT from 45 minutes a week to 30 minutes a week
- To discontinue Speech Services
- To change location (placement) of services from Special Purpose Center to the home

Parental Request Refused

- To refuse your request for a Nebulizer because it is a medical device and not considered assistive technology.
- To refuse your request for increase in an IFSP service (list the service)
- To refuse your request for an initial evaluation

Change in Eligibility

- To inform you that your child is no longer eligible for First Steps

Ongoing Assessment

- To complete an ongoing assessment (list the areas of assessment)
- To refuse the ongoing assessment proposed

Ten Day Waiver

The IDEA requirement to provide prior written notice is designed to allow the maintenance of status quo from the time a parent receives a Notice of Action. The parent(s) has the opportunity to decide if they want to request a due process hearing because they disagree with the proposed action. As stated earlier, in Missouri, we provide a waiting period of 10 days. So, if a parent receives a Notice of Action and they request a due process hearing within 10 days of the date of the Notice of Action, the action cannot be initiated until a decision is rendered following the due process hearing, and the child's status remains the same until that decision is rendered. For example, if the SPOE provided a Notice of Action: Change in Eligibility because the original eligibility determination was in error and they propose to withdraw the child from First Steps, if the parents request due process within 10 days of the date of the Notice, the child will remain in First Steps until the due process decision is rendered.

The waiver section of the Notice of Action form, however, provides the opportunity for the family to waive this 10 day waiting period if they are in agreement with the proposed activity commencing immediately. This may be documented through a signature from the parent or by the signature of a Service Coordinator who received the waiver permission from the parent by phone. In the second case, the Service Coordinator should indicate who they talked to, the date, and sign their name on the form.

There are two situations in which it is not necessary to request a 10 day waiver:

- Initial Evaluation Refused
- Ineligibility for First Steps

The reason for this is that the status of the child is inactive at the time of the notice, and there would be no benefit to the parent to allow a 10 day waiting period. Therefore, in these two situations, it is not necessary to complete the 10 Day Waiver section of the Notice of Action form.

Examples of when **NOT** to provide Notice include but are not limited to:

- Compensatory services have been authorized to compensate for services previously determined necessary in the IFSP, but not provided due to system problems or delays. (use case notes and the IFSP to document this)
- Compensatory services have been offered but the parent declines (Use case notes to document)
- A funding source is changing
- A provider is changing
- A new provider is being added to the IFSP after a No Provider Available (NPA) situation (use case notes and the IFSP to document this)
- The family voluntarily withdraws the child from First Steps. (Use case notes and/or a letter to the family confirming their decision has been received and letting them know they may re-refer if so desired prior to the child's third birthday.)
- The family refuses a service that is recommended by the IFSP team
- An IFSP team meeting or IFSP transition meeting is being scheduled. (use the meeting notification form)

Notice of Action/Consent Form

Written parental consent must be obtained in conjunction with provision of the Notice of Action in these circumstances:

- Conducting the initial evaluation and assessment of a child
- Initiating the provision of initial early intervention services.
- Initiating new service(s) as a result of an IFSP review.

In the above cases, the service coordinator will check the appropriate Action that is being proposed on the Notice form and fill in the reason for the action. Consent for initial evaluation and initiation of new services should not be included on the same form since the service coordinator must obtain consent for initial evaluation **prior to** conducting the evaluation and the consent for services is not obtained until after the IFSP team has determined the need for new services.

Consent means:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.

2. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom
3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

If Consent is NOT given, First Steps shall make reasonable efforts to ensure that the parent:

1. Is fully aware of the nature of the evaluation and assessment or the services that would be available
2. Understands that the child will NOT be able to receive the evaluation and assessment or services unless consent is given.

Parents may choose to not give consent for any particular service without jeopardizing any other services, and they may refuse a service at any time, even after accepting it, without affecting other intervention services.

Example reasons for Notice of Action requiring consent

To determine eligibility for the First Steps program
To begin services listed below (i.e. Physical Therapy)

The Service Coordinator must have the parent's signature and date of the signature **prior** to beginning to conduct any evaluation/assessment activities or initiating any early intervention services for the child or the child's family.

The Service Coordinator also must be careful to document the date the parent's signed consent was received, as no evaluation/assessment or early intervention service can begin prior to that date.

Provision of Parent's Rights Brochure

State and federal regulations require that a COPY of the Parental Rights Statement MUST be provided each time the parent is given a Notice of Action (see 34 CFR 303.403) and a verbal explanation should accompany the written statement.

Provision of Notification in the Parents Native Language

The notice must be-

- Provided in the native language of the parents, unless it is clearly not feasible to do so.

If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that-

- The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- The parent understands the notice; and
- There is written evidence that the requirements of this paragraph have been met

If a parent is deaf or blind, or has no written language, the mode of communication must be normally used by the parent (such as sign language, Braille, or oral communication).